

Table of Contents

Volume 16

CHAPTER 1. OVERVIEW OF SENTENCING IN FLORIDA

§ 1:1	Generally
§ 1:2	Criminal episode
§ 1:3	Classes of offenses
§ 1:4	—Misdemeanors
§ 1:5	—Felonies
§ 1:6	—Common law crimes
§ 1:7	—Ordinances
§ 1:8	Principal
§ 1:9	Accessory after the fact
§ 1:10	Attempts, conspiracies and solicitations
§ 1:11	Nonexistent crime
§ 1:12	Role of the judge at sentencing
§ 1:13	Role of the prosecutor at sentencing
§ 1:14	Role of the defense at sentencing
§ 1:15	Mental competency
§ 1:16	—Procedures for raising the issue of competence
§ 1:17	—Scope of examination and report
§ 1:18	—Hearing and disposition
§ 1:19	—Continuing incompetency to proceed, except incompetency to proceed with sentencing
§ 1:20	—Not guilty by reason of insanity
§ 1:21	—Conditional release
§ 1:22	—Civil commitment
§ 1:23	Pleas
§ 1:24	—Not Guilty
§ 1:25	—Guilty
§ 1:26	— <i>Nolo contendere</i>
§ 1:27	—Partial pleas
§ 1:28	—Procedures for the acceptance of guilty or <i>nolo contendere</i> pleas
§ 1:29	—Reservation of the right to appeal
§ 1:30	—Judicial discretion in accepting a plea
§ 1:31	—Pleas and sentencing in absentia
§ 1:32	—Withdrawal of plea
§ 1:33	Plea negotiations

§ 1:34	Plea agreements
§ 1:35	—Modification
§ 1:36	—Severability
§ 1:37	—Mutual mistake
§ 1:38	—Impossibility of performance
§ 1:39	—Specific Performance
§ 1:40	—Matters not subject to plea agreements
§ 1:41	—Waiver of rights by plea agreement
§ 1:42	—Failure to abide by plea agreement
§ 1:43	Definition of “sentence”
§ 1:44	Meaning of “year” and “month”
§ 1:45	Pre-sentence investigation
§ 1:46	Discovery
§ 1:47	Unreasonable delay in sentencing
§ 1:48	Sentencing hearing
§ 1:49	Right to counsel
§ 1:50	Right to notice
§ 1:51	Right to be present
§ 1:52	Right of confrontation
§ 1:53	—Use of hearsay
§ 1:54	— —Effect of the Florida Evidence Code
§ 1:55	Participation by victims in sentencing
§ 1:56	Right of allocution
§ 1:57	Jurisdiction to impose sentence
§ 1:58	Transfer from county for plea, sentence, or participation in a problem-solving court
§ 1:59	Participation in a problem-solving court
§ 1:60	Judicial discretion in the imposition of sentence
§ 1:61	—Reduction of offense
§ 1:62	—Accepting pleas to lesser offenses
§ 1:63	—Rendition of judgment and sentence
§ 1:64	—Withholding adjudication
§ 1:65	—Suspension of sentence
§ 1:66	—Withholding of sentence
§ 1:67	—Deferred sentencing
§ 1:68	—Specific correctional facility
§ 1:69	—Placement of certain inmates in local detention facilities
§ 1:70	—Conditions of confinement
§ 1:71	—Concurrent state and federal sentences
§ 1:72	—Orders of no contact
§ 1:73	—Structured sentencing
§ 1:74	—Post-sentence jurisdiction
§ 1:75	Sentencing alternatives
§ 1:76	—Straight confinement

TABLE OF CONTENTS

§ 1:77	—Straight probation or community control
§ 1:78	—Split sentence of probation or community control and imprisonment
§ 1:79	—Villery sentence
§ 1:80	—General sentencing
§ 1:81	—Concurrent and consecutive sentencing
§ 1:82	—Coterminous sentencing
§ 1:83	Sentencing length, commencement, proportionality and criteria
§ 1:84	—Due process
§ 1:85	—Proportionality
§ 1:86	—Sentencing factors
§ 1:87	—Matters that may not be considered
§ 1:88	—Rule of lenity
§ 1:89	Double Jeopardy and Merger
§ 1:90	Excessive punishments
§ 1:91	Cruel and unusual punishments
§ 1:92	Unusual punishments
§ 1:93	Structured sentencing, guidelines, and the Criminal Punishment Code
§ 1:94	—Effect of the Guidelines and the Criminal Punishment Code
§ 1:95	Costs, assessments, surcharges, and fines
§ 1:96	—Fines
§ 1:97	—Assessment of costs
§ 1:98	—Costs of supervision and rehabilitation
§ 1:99	—Medical expenses
§ 1:100	—Imposition of costs against the State
§ 1:101	—Summary
§ 1:102	—Collection of fines, fees, and costs
§ 1:103	—Imposition of civil fines in connection with criminal penalties
§ 1:104	Credit for time served
§ 1:105	—Jail credit
§ 1:106	—Tripp credit
§ 1:107	—Probation and community control credit
§ 1:108	—Prison credit
§ 1:109	—Gain time credit
§ 1:110	—Waiver of credit
§ 1:111	—Recision of credit
§ 1:112	—Forfeiture of credit
§ 1:113	—Credit for mistaken release
§ 1:114	—Credit for time spent on furlough
§ 1:115	—Credit for deferred sentencing
§ 1:116	—Credit on resentencing

- § 1:117 —Juvenile credit
- § 1:118 Attachment of jeopardy
- § 1:119 Pronouncement of sentence
- § 1:120 Imposition of sentence
- § 1:121 Vacating, setting aside, correcting, reducing, and modifying a sentence
- § 1:122 Vacating, setting aside, correcting, reducing, and modifying a sentence—Correction, reduction and modification of sentences under Florida Rule of Criminal Procedure 3.800
- § 1:123 Vacating, setting aside, correcting, reducing, and modifying a sentence—Vacation, setting aside and correction of sentences under Florida Rule of Criminal Procedure 3.850
- § 1:124 Vacating, setting aside, correcting, reducing, and modifying a sentence—Correction of jail credit under Florida Rule of Criminal Procedure 3.801
- § 1:125 Correction, reduction, and modification of sentence—Increase of a lawful sentence
- § 1:126 —Modification of a completed sentence
- § 1:127 Amendment or clarification of sentence
- § 1:128 Sentences imposed by mistake or misconception
- § 1:129 Vacatur of sentences obtained by fraud or misrepresentation
- § 1:130 Resentencing generally
- § 1:131 Increased punishment upon resentencing
- § 1:132 Vindictive sentencing
- § 1:133 Sentence restructuring
- § 1:134 Successor judge
- § 1:135 Amendment of sentencing laws and retroactivity
- § 1:136 Scoresheet errors and ineffective assistance of counsel
- § 1:137 Scoresheet manipulation
- § 1:138 Abatement
- § 1:139 Fugitive disentitlement

CHAPTER 2. THE 1983 SENTENCING GUIDELINES

- § 2:1 Generally
- § 2:2 The Florida Sentencing Commission
- § 2:3 The Florida Sentencing Guidelines (1983)
- § 2:4 —Applicability
- § 2:5 —Implementation
- § 2:6 Sentencing under the 1983 guidelines—Scoresheet form
- § 2:7 —Offense categories

TABLE OF CONTENTS

§ 2:8	—Offense category reference worksheets
§ 2:9	Completing the 1983 sentencing guidelines scoresheet
§ 2:10	—Biographical and demographic data
§ 2:11	—Primary offense at conviction (Part I)
§ 2:12	—Additional offenses at conviction (Part II)
§ 2:13	—Prior record (Part III A)
§ 2:14	—Same category priors (categories 3, 5 and 6 only) (Part III B)
§ 2:15	—Prior DUI convictions (category 1 only) (Part III C)
§ 2:16	—Legal status at time of offense (Part IV)
§ 2:17	—Victim injury (Part V)
§ 2:18	—Total points
§ 2:19	—Recommended sentence
§ 2:20	—Permitted sentence
§ 2:21	—Total sentence imposed
§ 2:22	— —Mandatory sentences
§ 2:23	— —Sentence exceeding statutory maximum
§ 2:24	— —Sentencing for separate offenses
§ 2:25	— —Split sentencing
§ 2:26	— —Community control
§ 2:27	— —Sentences imposed after revocation of probation or community control
§ 2:28	— —Habitual offenders
§ 2:29	—Reasons for departure
§ 2:30	—Judge
§ 2:31	—Preparer
§ 2:32	Continuation page
§ 2:33	Distribution of scoresheet copies

CHAPTER 3. THE 1994 SENTENCING GUIDELINES

§ 3:1	Generally
§ 3:2	—Purpose and construction
§ 3:3	—Applicability
§ 3:4	—Implementation
§ 3:5	Sentencing under the 1994 guidelines—Scoresheet forms
§ 3:6	—Offense severity levels
§ 3:7	— —Ranked offenses
§ 3:8	— —Unranked offenses
§ 3:9	— —Inchoate offenses
§ 3:10	Scoresheet computations
§ 3:11	Completing the 1994 guidelines scoresheet
§ 3:12	—Biographical and demographic data

- § 3:13 —Primary offense at conviction (Section I)
- § 3:14 —Additional offenses at conviction (Section II)
- § 3:15 —Victim injury (Section III)
- § 3:16 —Prior record (Section IV)
- § 3:17 —Legal status violation (Section V)
- § 3:18 —Release program violation (Section VI)
- § 3:19 —Firearm or destructive device (Section VII)
- § 3:20 —Semi-automatic firearm or machine gun (Section VIII)
- § 3:21 —Subtotal sentence points
- § 3:22 —Enhancements (Section IX)—Law enforcement protection
- § 3:23 — —Drug trafficking
- § 3:24 —Total sentence points
- § 3:25 —Sentence computation and presumptive sentencing range—Determining the presumptive sentence
- § 3:26 — —Calculating a state prison sentence
- § 3:27 —Total sentence imposed
- § 3:28 — —Enhanced/mandatory sentences
- § 3:29 — —Sentences exceeding statutory maximum
- § 3:30 — —Sentencing for separate offenses
- § 3:31 — —Split sentencing
- § 3:32 — —Sentences imposed after revocation of probation or community control
- § 3:33 — —Departure sentences
- § 3:34 — — —Downward departure
- § 3:35 — — —Upward departure
- § 3:36 — — — —Nonscoreable capital convictions
- § 3:37 — — — —Remote convictions
- § 3:38 — — — —Nonscoreable “out-of-sequence” convictions
- § 3:39 —Continuation page
- § 3:40 —Distribution of scoresheet copies

CHAPTER 4. THE 1995 SENTENCING GUIDELINES

- § 4:1 Generally
- § 4:2 —The *Heggs* case
- § 4:3 —Purpose and construction
- § 4:4 —Applicability
- § 4:5 —Implementation
- § 4:6 Sentencing under the 1995 guidelines—Scoresheet form
- § 4:7 —Offense severity levels
- § 4:8 — —Ranked offenses

TABLE OF CONTENTS

§ 4:9	— —Unranked offenses
§ 4:10	— —Inchoate offenses
§ 4:11	— —Reclassified offenses
§ 4:12	—Prior serious felony
§ 4:13	—Prior capital felony
§ 4:14	Scoresheet computations
§ 4:15	Completing the 1995 guidelines scoresheet
§ 4:16	—Biographical and demographic data
§ 4:17	—Primary offense at conviction (Section I)
§ 4:18	—Additional offenses at conviction (Section II)
§ 4:19	—Victim injury (Section III)
§ 4:20	—Prior record (Section IV)
§ 4:21	—Legal status violation (Section V)
§ 4:22	—Community sanction violation (Section VI)
§ 4:23	—Firearm/semi-automatic or machine gun (Section VII)
§ 4:24	—Prior serious felony (Section VIII)
§ 4:25	—Subtotal sentence points
§ 4:26	—Enhancements (Section IX)
§ 4:27	— —Law enforcement protection
§ 4:28	— —Drug trafficking
§ 4:29	— —Grand theft motor vehicle
§ 4:30	— —Domestic violence
§ 4:31	— —Criminal gang
§ 4:32	—Total sentence points
§ 4:33	—Sentence computation and presumptive sentencing range—Determining the presumptive sentence
§ 4:34	— —Calculating a prison sentence
§ 4:35	—Total sentence imposed
§ 4:36	— —Enhanced/mandatory sentences
§ 4:37	— —Sentences exceeding statutory maximum
§ 4:38	— —Sentencing for separate offenses
§ 4:39	— —Split sentencing
§ 4:40	— —Sentences imposed after revocation of probation or community control
§ 4:41	— —Departure sentences
§ 4:42	—Continuation page
§ 4:43	—Distribution of scoresheet copies

CHAPTER 5. CRIMINAL PUNISHMENT CODE SENTENCING

§ 5:1	Generally
§ 5:2	—Purpose and construction
§ 5:3	—Applicability

- § 5:4 —Implementation
- § 5:5 Sentencing under the Criminal Punishment Code
- § 5:6 Completing the Criminal Punishment Code scoresheet
- § 5:7 —Offense severity ranking chart
- § 5:8 —Unranked offenses
- § 5:9 —Preliminary steps
- § 5:10 —Biographical and demographic data
- § 5:11 —Primary offense (Section I)
- § 5:12 — —Accessory after the fact
- § 5:13 — —Attempts, conspiracies, and solicitations
- § 5:14 — —Prior capital felony points (primary offense)
- § 5:15 —Additional offenses (Section II)
- § 5:16 — —Prior capital felony points (additional offense)
- § 5:17 —Victim injury (Section III)
- § 5:18 — —Sexual penetration and sexual contact
- § 5:19 — —Death of the victim
- § 5:20 — —Injury resulting from capital offenses
- § 5:21 — —Severe, moderate, and slight injury
- § 5:22 —Prior record (Section IV)
- § 5:23 — —Convictions on appeal
- § 5:24 — —Convictions for offenses more than 10 years old
- § 5:25 — —Juvenile dispositions
- § 5:26 — —Federal, out of state, military, or foreign convictions
- § 5:27 — —County or municipal ordinances
- § 5:28 — —Entries showing no disposition
- § 5:29 — —Sealed or expunged records
- § 5:30 — —Pardoned offenses
- § 5:31 — —Uncertainty or ambiguity in the record
- § 5:32 — —Revocation of probation
- § 5:33 —Legal status violation (Section V)
- § 5:34 —Community sanction before the court for sentencing (Section VI)
- § 5:35 —Firearm/semi-automatic or machine gun (Section VII)
- § 5:36 —Prior serious felony (Section VIII)
- § 5:37 —Subtotal sentence points
- § 5:38 —Enhancements (Section IX)
- § 5:39 — —Law enforcement protection
- § 5:40 — —Aggravated animal cruelty
- § 5:41 — —Drug trafficking
- § 5:42 — —Violent offenses committed against specified justice system personnel
- § 5:43 — —Grand theft motor vehicle

TABLE OF CONTENTS

- § 5:44 Completing the Criminal Punishment Code
 Score sheet—Enhancements (Section IX)—Fleeing or
 attempting to elude a law enforcement officer
- § 5:45 Completing the Criminal Punishment Code
 score sheet—Enhancements (Section IX)—Gang
- § 5:46 — —Domestic violence
- § 5:47 — —Adult on minor sex offense
- § 5:48 —Total sentence points
- § 5:49 —Sentence computation
- § 5:50 —Total sentence imposed
- § 5:51 Sentences imposed after revocation of probation or
 community control
- § 5:52 Split sentences
- § 5:53 Enhanced/minimum mandatory sentences
- § 5:54 Reasons for departure—Mitigating circumstances
- § 5:55 In-court procedure
- § 5:56 Judge's signature
- § 5:57 Use of more than one score sheet
- § 5:58 Distribution of score sheet copies

CHAPTER 6. ALTERNATIVES TO CRIMINAL PUNISHMENT CODE SENTENCING, ENHANCEMENTS, RECLASSIFICATIONS, AND SPECIAL SANCTIONS

- § 6:1 Alternatives to, and mitigation of, Criminal
 Punishment Code sentencing
- § 6:2 —Preemption of felony prosecution
- § 6:3 —Non-prosecution agreements and deferred
 disposition agreements
- § 6:4 —Pretrial diversion
- § 6:5 — —General pretrial diversion
- § 6:6 — —Drug offender pretrial intervention
- § 6:7 — —Community court programs
- § 6:8 — —Veterans court programs
- § 6:9 — —Pretrial mental health court program
- § 6:10 — —Misdemeanor pretrial substance abuse education
 and treatment intervention program, misdemeanor
 pretrial veterans' treatment intervention program
 and misdemeanor pretrial mental health court
 program
- § 6:11 — —Bad check pretrial intervention program
- § 6:12 —Post-adjudicatory drug treatment
- § 6:13 —Prison diversion

- § 6:14 —Drug offender probation
- § 6:15 —Drug court
- § 6:16 —Sentencing back as a juvenile
- § 6:17 —Downward departure from the presumptive minimum calculated sentence
- § 6:18 — —Burden, level and sufficiency of proof in departure sentencing
- § 6:19 — —Defense obligations in departure sentencing
- § 6:20 —Downward departure from the minimum calculated sentence—Procedures to be followed by the judge in departure sentencing
- § 6:21 — —Statutory mitigating factors
- § 6:22 — — —The departure results from a legitimate, uncoerced plea bargain
- § 6:23 — — —The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct
- § 6:24 — — —The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired
- § 6:25 — — —The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment
- § 6:26 — — —The need for payment of restitution to the victim outweighs the need for a prison sentence
- § 6:27 — — —The victim was an initiator, willing participant, aggressor, or provoker of the incident
- § 6:28 — — —The defendant acted under extreme duress or under the domination of another person
- § 6:29 — — —Before the identity of the defendant was determined, the victim was substantially compensated
- § 6:30 — — —The defendant cooperated with the State to resolve the current offense or any other offense
- § 6:31 — — —The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse
- § 6:32 — — —At the time of the offense the defendant was too young to appreciate the consequences of the offense
- § 6:33 — — —The defendant is to be sentenced as a youthful offender
- § 6:34 — — —The defendant is a nonviolent felony offender
- § 6:35 Alternatives to, and mitigation of Criminal

TABLE OF CONTENTS

	Punishment Code Sentencing—Downward departure from the presumptive minimum calculated sentence—Statutory mitigating factors—The defendant was making a good faith effort to obtain or provide medical assistance for a drug-related overdose
§ 6:36	Alternatives to, and mitigation of, Criminal Punishment Code sentencing—Downward departure from the presumptive minimum calculated sentence—Statutory mitigating factors—Substantial assistance
§ 6:37	—Downward departure from the minimum calculated sentence—Non-statutory mitigating factors
§ 6:38	— —Non-Statutory mitigating factors—Enticement
§ 6:39	— — —Sentencing entrapment and sentence manipulation
§ 6:40	— — —Lower sentence of an equally or more culpable co-defendant
§ 6:41	— — —Diminished mental capacity
§ 6:42	— — —Extraordinary restitution
§ 6:43	— — —Acceptance of responsibility
§ 6:44	— — —Extraordinary susceptibility
§ 6:45	— — —Totality of circumstances
§ 6:46	— —Nexus to offense
§ 6:47	— —Limits on sentence mitigation
§ 6:48	— —Resentencing on remand after reversal of a downward departure
§ 6:49	Enhancement of penalty and reclassification of offense
§ 6:50	—Judicial fact finding
§ 6:51	—Upward departure under the Criminal Punishment Code for third degree felonies that are not forcible felonies
§ 6:52	—Proof of prior conviction
§ 6:53	—Criminal gang
§ 6:54	—Wearing a mask or hood
§ 6:55	—Evidencing prejudice while committing offense
§ 6:56	—Sexual battery by multiple perpetrators
§ 6:57	—Unlawful taking, possession, or use of law enforcement officer’s firearm
§ 6:58	—Reclassifications of various types of batteries and assaults
§ 6:59	—Burglary across county lines
§ 6:60	—Reclassifications of burglary during states of emergency
§ 6:61	—Reclassification of theft

- § 6:62 —Communications fraud
- § 6:63 —Counterfeit credit cards
- § 6:64 —EBT fraud
- § 6:65 —Prostitution and related acts
- § 6:66 —Reclassification of human trafficking
- § 6:67 —Sexual cyberharassment
- § 6:68 —Reclassifications of sexual performance by a child;
computer pornography; transmission of pornography
by electronic device; or transmission of material
harmful to minors to a minor by electronic device or
equipment
- § 6:69 —Sexual offenses against students by authority
figures
- § 6:70 —Unlawful filing of false documents or records
against real or personal property
- § 6:71 —False reports to law enforcement authorities
- § 6:72 —Reclassification of violation of injunction
- § 6:73 —False personation
- § 6:74 —Enhancement of penalty for cruelty to animals
- § 6:75 —Terrorism
- § 6:76 —Rioting
- § 6:77 —Minimum mandatory sentencing
- § 6:78 — —Capital felonies
- § 6:79 — —Life felonies
- § 6:80 — —Prison releasee reoffender
- § 6:81 — —Dangerous sexual felony offender
- § 6:82 — —Felon in possession of firearms
- § 6:83 — —Possession or use of firearm or destructive device
in commission of crime
- § 6:84 — —Drug possession, sale, and trafficking
- § 6:85 — —Manufacture of drugs in presence of children
- § 6:86 — —DUI manslaughter
- § 6:87 — —Fleeing or attempting to elude law enforcement
- § 6:88 — —Leaving the scene of a crash
- § 6:89 — —Assault or battery on law enforcement officers
and other designated persons
- § 6:90 — —Murder or attempted murder of a law
enforcement officer
- § 6:91 — —Attempted murder of specified justice system
personnel
- § 6:92 — —Aggravated assault or battery on an elderly
person
- § 6:93 — —Domestic violence
- § 6:94 — —Sexual offenses by persons previously convicted
of sexual offenses

TABLE OF CONTENTS

§ 6:95	—Prison releasee reoffender
§ 6:96	—Habitual felony offender, habitual violent felony offender, three-time violent felony offender, and violent career criminal
§ 6:97	— —“Probation and community control” versus “sentence”
§ 6:98	— —Determination hearing and presentence investigation
§ 6:99	— —Required notice of intent to seek enhanced penalties
§ 6:100	— —Fact of prior conviction
§ 6:101	—Proof of prison release date for enhancement
§ 6:102	—Habitual felony offender, habitual violent felony offender, three-time violent felony offender, and violent career criminal—Habitual felony offender
§ 6:103	— —Habitual violent felony offender
§ 6:104	— —Three-time violent felony offender
§ 6:105	— —Violent career criminal
§ 6:106	—Scoresheet preparation when PRR, VCC, HFO, HVFO and 3-Time VCC designations apply
§ 6:107	—Reclassification of offenses and minimum mandatory sentencing under section 775.087
§ 6:108	—Dangerous sexual felony offender
§ 6:109	Direct and collateral consequences and special sanctions
§ 6:110	—DNA testing
§ 6:111	—Driver license revocation
§ 6:112	—Loss of civil liberties upon conviction of a felony
§ 6:113	—Registration of convicted felons
§ 6:114	—Forfeiture
§ 6:115	—HIV testing
§ 6:116	—Castration
§ 6:117	—Sexual offender/sexual predator sanctions
§ 6:118	— —Sexual offender
§ 6:119	— —Sexual predator
§ 6:120	— —Mandatory designation on driver’s license or identification card
§ 6:121	— —Mandatory designation
§ 6:122	— —Removal of the requirement to register as a sexual offender or sexual predator in special circumstances
§ 6:123	—Involuntary civil commitment
§ 6:124	— —Baker Act commitment
§ 6:125	—Involuntary civil commitment—Jimmy Ryce Act commitment
§ 6:126	—Deportation

- § 6:127 —Restraining orders upon conviction of stalking or
cyberstalking
- § 6:128 —Animal cruelty registry

CHAPTER 7. DRIVING UNDER THE INFLUENCE AND BOATING UNDER THE INFLUENCE

- § 7:1 Driving under the influence and boating under the
influence generally
- § 7:2 Driving under the influence
- § 7:3 —Prior conviction
- § 7:4 —First conviction
- § 7:5 —Second conviction
- § 7:6 —Third conviction
- § 7:7 —Fourth or subsequent conviction
- § 7:8 —Property damage, personal injury or death
- § 7:9 —BrAC or BAC above 0.15 or accompanied by person
under the age of 18 years
- § 7:10 —Probation
- § 7:11 —Suspension of driver license or driving privileges
- § 7:12 —Ignition interlock devices
- § 7:13 —Impoundment or immobilization
- § 7:14 —Credit for residential treatment
- § 7:15 —Public service in lieu of fine
- § 7:16 —Post-arrest release
- § 7:17 Boating under the influence
- § 7:18 —First conviction
- § 7:19 —Second conviction
- § 7:20 —Third conviction
- § 7:21 —Fourth or subsequent conviction
- § 7:22 —Property damage, personal injury or death
- § 7:23 —BrAC or BAC above 0.15 or accompanied by person
under the age of 18 years
- § 7:24 —Probation
- § 7:25 —Impoundment or immobilization
- § 7:26 —Credit for residential treatment
- § 7:27 —Post-arrest release

CHAPTER 8. CAPITAL SENTENCING

- § 8:1 Capital sentencing generally
- § 8:2 Capital sentencing—Separate proceedings on the issue
of penalty
- § 8:3 —Findings and recommended sentence by the jury
- § 8:4 —Aggravating factors

TABLE OF CONTENTS

§ 8:5	— —Capital murder
§ 8:6	— —Capital drug trafficking
§ 8:7	— —Capital sexual battery
§ 8:8	— —Capital human trafficking
§ 8:9	—Mitigating factors
§ 8:10	—Mitigating circumstances—Matters that are not mitigation
§ 8:11	—Victim impact evidence
§ 8:12	—Prohibitions on imposition of the death penalty
§ 8:13	— —Minority
§ 8:14	— —Intellectual disability
§ 8:15	— —Insanity
§ 8:16	— —Pregnancy
§ 8:17	— —Ordinary murder
§ 8:18	— —Rape
§ 8:19	— —Felony murder absent culpability
§ 8:20	— —A more culpable defendant received a life sentence
§ 8:21	— —No aggravating factors are present
§ 8:22	— —Prosecutor override
§ 8:23	— —Plea agreement not to seek the death penalty
§ 8:24	—Plea agreement for the death penalty
§ 8:25	—Review of judgment and sentence
§ 8:26	—Issuance of warrant of execution
§ 8:27	—Stay of execution of death sentence
§ 8:28	—Grounds for death warrant; limitations of actions
§ 8:29	—Execution of death sentence
§ 8:30	—Sentencing orders in capital cases
§ 8:31	—Regulation of execution

CHAPTER 9. PROBATION AND COMMUNITY CONTROL

§ 9:1	In general
§ 9:2	Jurisdiction to impose probation or community control
§ 9:3	Written order versus oral pronouncement
§ 9:4	Constitutional rights of the probationer or community controllee
§ 9:5	—Self-incrimination
§ 9:6	—Search and seizure
§ 9:7	Terms and conditions of probation—Fundamental obligation to obey the law
§ 9:8	—Necessary incidents to probation or community control
§ 9:9	—Invalid conditions of probation or community control

- § 9:10 —Standard, or general, terms and conditions of probation
- § 9:11 Special conditions of probation
- § 9:12 —Medical marijuana
- § 9:13 Military servicemembers and veterans
- § 9:14 Administrative probation
- § 9:15 —Post-adjudicatory drug treatment
- § 9:16 Community control
- § 9:17 Standard terms and conditions of community control
- § 9:18 Criminal gang probation and community control
- § 9:19 Sex offender probation or community control
- § 9:20 Violent felony offender of special concern
- § 9:21 Probationary and community control time periods
- § 9:22 Reinstating and continuing probation/community control
- § 9:23 Enhancement of the terms and conditions of probation/community control
- § 9:24 Modification or rescission of probation or community control
- § 9:25 —After violation
- § 9:26 —Early termination of probation/community control
- § 9:27 Conversion of probation to community control
- § 9:28 Revocation of probation or community control
- § 9:29 —Jurisdiction
- § 9:30 —Arrest
- § 9:31 —Tolling of probationary or community control period
- § 9:32 —Grounds for revocation
- § 9:33 — —Prospective revocation
- § 9:34 — —Revocation after commencement of probation or community control
- § 9:35 — — —Failure to provide verified residence
- § 9:36 — — —Failure to pay court-ordered costs or restitution
- § 9:37 — — —Failure to file reports
- § 9:38 — — —Failure to file truthful reports
- § 9:39 — — —Engagement in other criminal activity
- § 9:40 — — —Association with persons engaged in criminal activity
- § 9:41 — — —Refusal to admit guilt for purposes of treatment
- § 9:42 — — —Failure to participate in court-ordered sex offender treatment
- § 9:43 — — —Unexcused absences from therapeutic programs
- § 9:44 — — —Failure to complete therapeutic programs
- § 9:45 — — —Failure to follow routine supervisory instructions

TABLE OF CONTENTS

§ 9:46	— — — Failure to perform required community service hours
§ 9:47	— Proceedings when the defendant admits the violation
§ 9:48	— Proceedings when the defendant does not admit the violation
§ 9:49	— Revocation hearing
§ 9:50	— Specificity and accuracy of the allegation
§ 9:51	— Prosecutor’s burden of proof and persuasion in revocation proceedings
§ 9:52	— Sufficiency of the evidence
§ 9:53	— — Self-incrimination
§ 9:54	— — Evidence obtained in violation of the Fifth Amendment
§ 9:55	— — Evidence obtained in violation of the Fourth Amendment
§ 9:56	— — Mere allegations
§ 9:57	— — Probation records
§ 9:58	— — Laboratory reports
§ 9:59	— — Admissions
§ 9:60	— — Hearsay
§ 9:61	— — Sheer conjecture
§ 9:62	— Willful and substantial nature of the violation
§ 9:63	— Effect of acquittal/ dismissal/nolle prosequi/reversal and collateral estoppel—Nolle prosequi
§ 9:64	— — Acquittal
§ 9:65	— — Dismissal
§ 9:66	— — Reversal
§ 9:67	— — Collateral estoppel on the underlying new criminal offense
§ 9:68	— Double jeopardy
§ 9:69	Sentencing alternatives for violations of probation/ community control—General
§ 9:70	Sentencing alternatives for violations of probation/ community control—Mandatory modification or continuance
§ 9:71	— Alternative sanctions
§ 9:72	— Minimum mandatory sentencing
§ 9:73	— Habitual offenders
§ 9:74	Sentencing alternatives for violations of probation/ community control—Youthful offenders
§ 9:75	— Sexual offenders and sexual predators
§ 9:76	— When the original plea was uncounseled
§ 9:77	— When there was an original waiver of jury trial and order of non-imprisonment
§ 9:78	— When the sentence was capped on violation

- § 9:79 —When the original sentence was a split sentence
- § 9:80 —Downward departure
- § 9:81 — —Postadjudicatory treatment-based drug court program
- § 9:82 Sentencing alternatives for violations of probation/ community control—Downward departure— Postadjudicatory mental health court program or veterans treatment court program
- § 9:83 Sentencing alternatives for violations of probation/ community control—Concurrent versus consecutive sentencing
- § 9:84 —Enhancement of sentence
- § 9:85 —Mandatory adjudication
- § 9:86 —Requirement of written revocation order
- § 9:87 Scoresheet preparation

CHAPTER 10. RESTITUTION

- § 10:1 Generally
- § 10:2 Jurisdiction
- § 10:3 Criminal restitution and civil damages
- § 10:4 Nonmonetary restitution
- § 10:5 Restitution from property and assets of the defendant
- § 10:6 Victims and intervenors
- § 10:7 Criminal episode
- § 10:8 Restitution as a condition of probation or community control
- § 10:9 Restitution not as a condition of probation or community control (incarcerated defendants)
- § 10:10 When restitution is not disputed: restitution as part of a plea agreement
- § 10:11 When restitution is disputed: restitution imposed after evidentiary hearing
- § 10:12 —Evidentiary burdens
- § 10:13 —Causation
- § 10:14 —Determination of amount of restitution
- § 10:15 — —Dollar value of crime
- § 10:16 — —Insurance deductible
- § 10:17 — —Fair market value
- § 10:18 — —Purchase price and replacement cost
- § 10:19 — —Property in pawn
- § 10:20 — —Set-offs and other factors that reduce the amount owed
- § 10:21 —Sufficiency of the evidence
- § 10:22 — —Crimes Compensation Trust Fund payment
- § 10:23 — —Estimates

TABLE OF CONTENTS

§ 10:24	— —Expert testimony
§ 10:25	— —Insurance claims
§ 10:26	— —Medical bills
§ 10:27	— —Opinions
§ 10:28	— —Presentence investigation report (PSI)
§ 10:29	— —Repair bills
§ 10:30	— —Sale price
§ 10:31	—Ability to pay
§ 10:32	—Apportionment of restitution among co-defendants
§ 10:33	—When the defendant is a corporation or unincorporated association
§ 10:34	Subjects of restitution
§ 10:35	—Attorney’s fees
§ 10:36	—Improved security
§ 10:37	—Collateral damage
§ 10:38	—Continuing damage
§ 10:39	—Dealing in stolen property
§ 10:40	—Down payments
§ 10:41	—Funeral expenses
§ 10:42	—Income—Lost wages
§ 10:43	— —Lost future lease payments
§ 10:44	— —Lost profits
§ 10:45	—Interest
§ 10:46	—Investigative costs
§ 10:47	—Medical expenses
§ 10:48	—Purchase of property stolen or attempted to be stolen
§ 10:49	—Recovered property
§ 10:50	—Subsequently stolen property
§ 10:51	—Straightening out financial records
§ 10:52	—Safekeeping of child
§ 10:53	—Travel expenses
§ 10:54	—Unlicensed activities
§ 10:55	—Unpaid taxes
§ 10:56	—Unrecovered property
§ 10:57	—Disgorgement in cases of illegal contracting
§ 10:58	—Bribery and misuse of office
§ 10:59	—Offenses by public officers and employees
§ 10:60	—Obtaining property by false personation
§ 10:61	—Violation of injunction for protection against stalking or cyberstalking
§ 10:62	—Theft of utilities
§ 10:63	Payment within a specified period or in specified installments or immediately
§ 10:64	Estoppel and civil recovery

- § 10:65 Effects of bankruptcy
- § 10:66 Crimes Compensation Trust Fund
- § 10:67 Enforcement of a restitution order
- § 10:68 Collection of restitution
- § 10:69 Income deduction order for restitution
- § 10:70 Revocation of probation, community control, or parole
for failure to pay restitution
- § 10:71 Collection of default in payment of restitution
- § 10:72 Government right of restitution for costs of
incarceration
- § 10:73 Unclaimed restitution

CHAPTER 11. JUVENILE SENTENCING

- § 11:1 Juvenile sentencing policy and purposes
- § 11:2 —Common law defense of infancy
- § 11:3 Jurisdiction
- § 11:4 Competence to proceed
- § 11:5 Right to counsel
- § 11:6 Parent and custodian responsibilities
- § 11:7 Victim rights
- § 11:8 Responsibilities of the state attorney
- § 11:9 Initiation of prosecution
- § 11:10 —Releasing the child to a parent or guardian
- § 11:11 —Taking a child into custody
- § 11:12 Detention
- § 11:13 Diversion
- § 11:14 —Law enforcement agency postarrest diversion
programs
- § 11:15 —Civil citation or similar prearrest diversion
programs
- § 11:16 —Juvenile probation officer supervised diversion
- § 11:17 —Community arbitration
- § 11:18 —Teen court
- § 11:19 —Juvenile Alternative Services Program
- § 11:20 —Intensive Delinquency Diversion Services
- § 11:21 —Neighborhood restorative justice
- § 11:22 —Delinquency pretrial intervention program
- § 11:23 Diversion program expunction
- § 11:24 Judicial disposition in juvenile court
- § 11:25 —Juvenile petition
- § 11:26 —Arraignment
- § 11:27 —Adjudicatory hearing
- § 11:28 —Predisposition reports and other evaluations
- § 11:29 —Dispositional hearings

TABLE OF CONTENTS

§ 11:30	— —Withholding adjudication of delinquency
§ 11:31	— —Adjudication of delinquency
§ 11:32	—Fingerprinting and photographing
§ 11:33	—Victim and parent/guardian notification
§ 11:34	—Requirement of written sentencing order
§ 11:35	Probation
§ 11:36	Conditional release
§ 11:37	Violation of probation or conditional release
§ 11:38	Residential commitment programs—Commitment to licensed child-caring agency
§ 11:39	—Commitment to the Department of Juvenile Justice
§ 11:40	Commitment programs for juvenile misdemeanor offenders
§ 11:41	Commitment programs for juvenile felony offenders
§ 11:42	—Juvenile correctional facilities or juvenile prisons
§ 11:43	Sexting by a minor
§ 11:44	Juvenile sex offenders
§ 11:45	Mandatory dispositions—Firearms
§ 11:46	—DNA testing
§ 11:47	—Drug offenses
§ 11:48	—Criminal mischief
§ 11:49	Miscellaneous sanctions—Driver’s license revocation or suspension
§ 11:50	—Community service in a public service program
§ 11:51	—Restitution
§ 11:52	—Parent or guardian community work project, community service and restitution
§ 11:53	Court fees and costs—Fees
§ 11:54	—Costs
§ 11:55	Punishment for contempt of court
§ 11:56	Collateral consequences of juvenile dispositions
§ 11:57	—Use of juvenile priors on adult scoresheet
§ 11:58	—Use of unscorable juvenile priors as aggravators
§ 11:59	—Firearm possession before age 24
§ 11:60	Correction of disposition or commitment orders
§ 11:61	Disposition where the juvenile is prosecuted as an adult
§ 11:62	—Direct file—Discretionary direct file
§ 11:63	— —Effect of direct file
§ 11:64	—Voluntary waiver
§ 11:65	—Involuntary waiver—Discretionary waiver
§ 11:66	— —Mandatory waiver
§ 11:67	—Waiver hearing
§ 11:68	—Effect of order waiving jurisdiction
§ 11:69	—Indictment

- § 11:70 Sentencing powers, procedures, and alternatives for juveniles prosecuted as adults
- § 11:71 —Presentence investigation report
- § 11:72 —Sentencing hearing
- § 11:73 —Sentencing alternatives—Sentencing to adult sanctions
- § 11:74 — —Sentencing to juvenile sanctions
- § 11:75 — —Imposition of adult sanctions upon failure of juvenile sanctions
- § 11:76 — —Further proceedings heard in adult court
- § 11:77 — —School attendance
- § 11:78 Transfer of children from the Department of Corrections to the Department of Juvenile Justice
- § 11:79 Transfer to other treatment services
- § 11:80 Detention credit towards commitment or incarceration
- § 11:81 Truancy court

CHAPTER 12. GAIN TIME, POST RELEASE, PAROLE, EXECUTIVE CLEMENCY, AND EXPUNCTION

- § 12:1 Role and authority of the Department of Corrections in sentencing
- § 12:2 Maximum sentence expiration date
- § 12:3 Tentative release date
- § 12:4 Gain time
- § 12:5 —Emergency gain time, administrative gain time, and provisional credits
- § 12:6 Forfeiture of gain time and the right to earn gain time in the future
- § 12:7 Release by reason of gain time allowances or attainment of provisional release date
- § 12:8 Post release—Conditional release
- § 12:9 —Conditional medical release
- § 12:10 —Control release
- § 12:11 —Addiction recovery supervision
- § 12:12 Violation of conditional release, control release, conditional medical release, or addiction recovery supervision
- § 12:13 Parole
- § 12:14 —Eligibility for parole
- § 12:15 —Presumptive parole release date
- § 12:16 —Effective parole release date
- § 12:17 —Terms and conditions of parole
- § 12:18 —Violations of parole

TABLE OF CONTENTS

- § 12:19 Discharge from parole supervision or release supervision
- § 12:20 Executive clemency
- § 12:21 —Restoration of civil rights
- § 12:22 —Clemency process
- § 12:23 —Rules of executive clemency
- § 12:24 Adult expunction and sealing generally
- § 12:25 Criminal history records ineligible for court-ordered expunction or court-ordered sealing
- § 12:26 Court-ordered expunction of criminal history records
- § 12:27 Juvenile expunction
- § 12:28 Court-ordered sealing of criminal history records
- § 12:29 Automatic sealing of criminal history records
- § 12:30 Compensation for wrongful incarceration

CHAPTER 13. CONTEMPT SENTENCING

- § 13:1 Generally
- § 13:2 —Contempt defined
- § 13:3 —Jurisdiction and power to punish contempts
- § 13:4 —Limits on the power to punish contempts
- § 13:5 Types of contempts
- § 13:6 —Civil contempt
- § 13:7 —Criminal contempt
- § 13:8 —Direct contempt
- § 13:9 —Indirect contempt
- § 13:10 Conduct constituting contempt—Generally
- § 13:11 —Continuing offense
- § 13:12 —Intent
- § 13:13 —Examples of contempt
- § 13:14 — —Pleadings
- § 13:15 — —Violation of court order
- § 13:16 — —Failure to appear
- § 13:17 — —Refusal to testify
- § 13:18 — —Insults and personal attacks
- § 13:19 — —Profanity in the courtroom
- § 13:20 — —Threats
- § 13:21 — —Perjury
- § 13:22 — —Juror misconduct
- § 13:23 — —Support payments
- § 13:24 Procedures for punishing criminal contempts
- § 13:25 —Direct criminal contempt
- § 13:26 — —Disqualification of judge
- § 13:27 —Indirect criminal contempt
- § 13:28 — —Order to show cause

- § 13:29 — —Motions; answer
- § 13:30 — —Order of arrest; bail
- § 13:31 — —Arraignment; hearing
- § 13:32 — —Disqualification of judge
- § 13:33 — —Burden and sufficiency of proof in criminal contempt proceedings
- § 13:34 — —Right to counsel
- § 13:35 — —Right to jury trial
- § 13:36 — —Self-incrimination
- § 13:37 — —Speedy trial
- § 13:38 Procedures for sanctioning criminal contempts—
Indirect criminal contempt—Verdict; judgment
- § 13:39 — —Sentence for indirect contempt
- § 13:40 Procedures for sanctioning civil contempts
- § 13:41 —Direct civil contempt
- § 13:42 —Indirect civil contempt
- § 13:43 — —Motion and notice
- § 13:44 — —Hearing
- § 13:45 — —Order and sanctions
- § 13:46 — —Purge
- § 13:47 — —Review after incarceration
- § 13:48 — —Other relief
- § 13:49 —Converting civil contempt to criminal contempt
- § 13:50 Punishments
- § 13:51 —Criminal contempts
- § 13:52 —Civil sanctions
- § 13:53 — —Fines
- § 13:54 — —Incarceration
- § 13:55 — —Other sanctions
- § 13:56 —Mixed punishments and sanctions
- § 13:57 —Bail
- § 13:58 —Appeal
- § 13:59 —Double jeopardy

Table of Laws and Rules

Table of Cases

Index